

IN THE MATTER OF	:	BEFORE THE
R. V. INTERNATIONAL	:	HOWARD COUNTY
FOUNDATION	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-038C

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DECISION AND ORDER

On February 25, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of R.V. International Foundation to use an existing building as a nonprofit community hall and camp conditional use in an R-20 (Residential-Single) zoning district, filed pursuant to Section 131.N.36 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Pradip Ghosh and Amit Ghosh testified in favor of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 2nd Election District on the northeast side of MD 103/Montgomery Road about 1,200 feet northwest of Stonecrest Drive and is also known as

4495 Montgomery Road (the "Property"). It is referenced on Tax Map 31, Grid 1, Parcel 579, as Lot 4.

2. Parcel 579, which incorporates two lots, the 3-acre Lot 3 and the 1.89-acre Lot 4, has about 440 feet of frontage on the northwest side of Montgomery Rd. The five-acre roughly L-shaped site is subject to Record Plats 13213, 13779, and 10746. Lot 3 encompasses the northerly section of the site and Lot 4, the southerly section.

3. Parcel 579 was developed under Site Development Plan 92-91 (the April 1993 "Approved Plan") as Shangri-La, a Montessori School, a before and after daycare center for the Montessori students, a religious facility, and an elderly care facility. The school and day care center currently operate in Building 1 on Lot 3. The group care elderly housing facility operates in Buildings 2 and 3 on Lot 4 (the "Site").

4. Access to the Property is provided by a centrally located driveway off MD 103, which leads to a paved parking area on Lot 3 (to the southwest side of Building 1). The driveway then turns in a southerly direction to end in second paved parking area between Buildings 2 and 3 on Lot 4. An open wrought iron fence and a row of evergreen trees run along the rear lot line of Building 2 and continue along the southeasterly and southerly side lot lines (adjacent to Buildings 2 and 3). A wood privacy fence runs behind and alongside Building 3. To the west of Building 2 is a stormwater management pond to the front (northwest) of Building 2. Wetlands and wetland buffers run north to south through the Property's center area.

5. Vicinal Properties. Adjacent properties on this side of MD 103 are also zoned R-20. The adjoining parcel to the northwest is the site of the Ellicott Mills Middle School. The adjoining parcel to the southeast, Parcel 592, is a single-family detached dwelling subdivision (Turkey Farm Place, Lots 1-6). Lot 1 is encumbered with wetlands and associated buffers where it

adjoins the Site and is improved by a single-family detached dwelling situated toward the rear lot line. Parcel 481, which adjoins the Property's southerly (side) lot line and fronts on MD 103 is the site of a Howard County water pumping station. To the Property's southwest, across MD 103, are several residential developments zoned R-SC (Residential: Single Cluster).

6. Roads. MD 103 has one travel lane in each direction with approximately 24 feet of paving and acceleration/deceleration lanes within an ultimate 80-foot right-of-way. The posted speed limit is 45 miles per hours. Sight distance from the driveway entrance is good, with a sight distance of more than 500 feet. State Highway Administration data reports the traffic volume on MD 103 east of US 29 as 27,975 average annual daily trips as of 2005.

7. The Property is served by public water and sewer facilities.

8. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential." The General Plan Transportation Map depicts MD 103 as a Minor Arterial.

9. Zoning History (Partial)

A). BA 92-053C, special exception granted March 1993 to the Montessori School for a day care center on the condition that the hours of operation are limited to 7:00 a.m. to 8:30 a.m. and from 3:30 to 6:00 p.m. Monday through Friday.

B). BA 90-65E, special exception to operate a Montessori School for 90 students, denied, appealed to Circuit Court, which reversed and remanded to the Board of Appeals, which granted the special exception on February 27, 1992, subject to the condition that hours of operation be restricted to 8:30 a.m. to 3:30 p.m., Monday through Friday.

C). BA 89-051E, special exception to operate a group care facility for the elderly on that portion of Parcel 579 not covered by BA 89-011E.

D). BA 89-011E, special exception to operate a day care denied November 2, 1989.

Special exception to operate a religious facility granted November 2, 1989.

10. A note on the amended site development plan submitted as Applicant's Exhibit 2 states the Phase II buildings (Nos. 2, 3 and 4) were approved under BA Case No. 94-16E on March 7, 1995 and BA Case No. 96-027E on November 17, 1996. Note 16.g states the religious use granted in BA 89-11E may not operate concurrently with the school. Note 17.III, which provides parking data for the school, the assisted living facility, and the religious facility, notes that 45 spaces, including two disability spaces, are provided for Building 1, and 26 spaces, including six disability spaces, are provided for Buildings 2 and 3. The plan also gives the first floor area of Building 3 as 5,840 square feet.

11. An occupancy load assessment performed by the Howard County Fire Marshall determined the maximum number of occupants permitted in Building 3: (1) main assembly room: banquet use—192 persons, meeting—291 persons, and (2) reception area: banquet use—11 persons, meeting—17 persons. The assessment further states that the number of persons and the remoteness of the parking would encourage parking along the access road and recommends approval only if the access curb was identified as a fire lane and marked as 4495.

12. The Petitioner proposes to operate a community hall and camp in Building 3, an existing two-story building on Lot 4. According to the petition, the community could rent Building 3 for small and medium size gatherings. Only indoor activities are planned. Building 3 would be available to the community for informational meetings, school-fund raisers, piano recitals, and weddings. All persons renting the building for these uses will be responsible for the event. The proposed hours of operation are 6:00 p.m. to 12:00 a.m. Mondays through Fridays and weekends. No outdoor lighting is proposed.

13. The petition also states that any event proposing a use involving any equipment or large amount of outdoor lighting would be allowed only if the Petitioner determines that such equipment will not affect adjacent property owners to any significant extent.

14. According to the petition, Building 3 is presently used for gatherings and events held by the school and the assisting living facility, which are both entities of Shangri-La Homes, a Maryland Corporation. The petition states R.V. International Foundation, the Petitioner, is a nonprofit organization and the owner of Building 3.

15. The Petitioner is also requesting the Hearing Authority to reduce setbacks up to 20 feet in two areas of the Site as depicted on the submitted plan, on the ground that the adjoining property contains wetlands and forested areas, which would buffer the use from neighboring residential properties.

16. When questioned about the Petitioner's nonprofit status, Pradip Ghosh introduced into evidence Applicant's Exhibit 1, an undated certificate stating that as of February 25, 2008, Ramakrishna Vivekananda International Foundation, Inc. is a corporation duly incorporated. Because this document does not establish the foundation's nonprofit status, I held the record open to permit the Petitioner to submit the requisite documentation. This documentation was submitted on February 26, 2008 (Applicant's Exhibit 3) in the form of Articles of Incorporation for the foundation. Article 5 states the corporation shall be a nonprofit corporation.

17. Addressing the TSR's comment that the Record Plats and Approved Plan do not substantiate the presence of dedicated wetlands along the borders of Buildings 2 and 3 on the plan (and as is stated in the comments attached to the petition), Pradip Ghosh testified to their existence on the adjacent Parcels 481 and 592.

18. In response to the TSR comment that Building 3 is 19.29 feet from its closest point to the property line adjoining a residentially zoned property, Pradip Ghosh testified that it is actually 20 feet if measured from the first floor.

19. Pradip Ghosh and Amit Ghosh testified that the parking for the proposed use would be met by the 45 parking spaces on Lot 3.¹ Amit Ghosh testified that as the manager of the elderly care facility he would not let guests park in front of the elder care facility, that there would be no employees working at any event, and that all event sponsors would be responsible for everything, including directing guests to the parking area on Lot 3. They initially stated that the maximum number of guests permitted at any event would be about 120-150 and that any attendees would not be permitted to use the parking area in front of Building 3 on Lot 4. When informed of the Fire Marshall's occupancy load assessment, the Ghoshs stated they wished to use the Fire Marshall's occupancy figures as the maximum number of guests associated with the use.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. Although community halls and camps conditional uses are presumptively compatible in residential areas, this use involves a potentially high intensity and scale of use, up to 308 guests at any event. The Petitioner has not adduced evidence that this scale of use in a residential neighborhood was contemplated or addressed in the General Plan. Nor has the Petitioner provided sufficient evidence to show that the nature and

¹ Among the items a petitioner is required to provide on the conditional use plan included in the petition is item (f), location and surface materials of existing and proposed parking spaces and number of existing and proposed parking spaces. This plan becomes part of the Board of Appeals decision and order.

intensity of the operation and the size of the Property in relation to the use, including the camp, are in harmony with the land uses and policies indicated in the General Plan for the District in accordance with Section 131.B.1.

2. Section 131.B.1.b requires me to evaluate whether the overall intensity and scale of uses, when combined with other Special Exceptions and Conditional uses on Lot 4 (the Site), is appropriate, given the adequacy of proposed buffers and setbacks. The day care center and school operates Monday through Friday from 7:00 a.m. to 6:00 p.m. A religious facility is also permitted as a conditional use on Lot 3, although it may not operate concurrently with the school. The assisted care facility directly across from Building 3 operates continuously.

The Petitioner proposes a 12:00 a.m. ending time for community hall events attended by potentially large numbers of guests. The use cannot be accommodated on the Site. Parking is therefore provided on the 45 parking space parking area on Lot 4, which is about 200 feet from Building 3. In my view, the Petitioner has not adduced evidence that the overall scale and intensity of uses, in combined with the existing special exception/conditional uses on the Site, or even the Property, is appropriate, especially considering its request for a reduction in a setback that the Zoning Regulations disallow.

Furthermore, given the assisted living facility's continuous hours of operation, and the fact that many elderly resident rooms face the entry to Building 3, with only an open parking lot to separate the two buildings, it is clear that the elderly care use will not adequately buffered from the proposed use.

Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use will have adverse effects on vicinal properties beyond those ordinarily associated with such a use. Virtually every human activity has the potential for adverse impact.

Zoning recognizes this, and, when concerned with conditional uses, accepts some level of adverse impact in light of the beneficial purposes the zoning body determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed community hall/camp has adverse effects in the R-20 zone. The proper question is whether those effects are greater at the proposed site than they would be generally elsewhere with the R-20 zone.

The Petitioner bears the burden of proving the proposed use will not have greater adverse effects. For the reasons stated below, I conclude the Petitioner has failed to meet its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a community hall and camp in an R-20 district.

(a) Physical Conditions. According to the petition, the proposed use will be conducted principally indoors and no outdoor lighting is proposed. However, the petition also states the Petitioner would make individual determinations about proposed events involving equipment and outdoor lighting. The Petitioner plans to permit up to 308 guests at a given event. Such events, even if entirely indoors, will assuredly generate more noise than a small or medium size gathering, as the petition proposed. Clearly, additional (outside) noise will be generated by guests making the 200-foot walk from the "proposed" parking area, which in the absence of an appropriate landscaping plan, will likely cause noise to the nearby residences behind the elderly care facility, and the many residences across Montgomery Road. In view of this evidence, I must conclude the Petitioner has not demonstrated that the use will not cause excessive noise, dust, lighting, vibrations, hazards, or other physical conditions beyond those inherently associated with a community hall and camp in an R-20 zoning district.

(b) Structures and Landscaping. No new structures are proposed. The location and nature of the two-level building will not hinder or discourage the development and use of adjacent land and structures more at the subject site than generally elsewhere, in compliance with Section 131.B.2.b of the Zoning Regulations.

(c) Parking and Drives. The existing driveway appears to be adequate for the proposed use, a conclusion that must be qualified by the Fire Marshall's concern about guests endeavoring to park along it rather than use the parking lot on Lot 3. Section 133.D.6.b requires 10 parking spaces (including disability spaces) per 1,000 square feet for public use plus one space per employee for clubs, lodges, and similar uses. It is reasonable to conclude the Petitioner intends to use the entire building based on the Ghosh's' reliance on the Fire Marshall's occupancy load, which is derived from the total assembly and reception square footage on the two floors. Building 3 is 5,840 square feet in size on the first floor. Based on a total area (two floors) of 11,680 square feet, 118 spaces are required. The 24 spaces in the parking area on Lot 4 are inadequate to support the use and there are only two disability parking spaces provided for Building 3. Even assuming the use of the parking area on Lot 3 as part of the conditional use area, the number of parking spaces is inadequate and the Petitioner did not provide a landscape plan demonstrating how the parking area would be screened. No evidence as to the adequacy of refuse areas and the location and screening was presented. I therefore conclude the Petitioner has not demonstrated the proposed use accords with Section 131.B.2.c.

(d) Safe Access. As discussed above, sight distance is adequate and the driveway can be safely accessed.

II. Specific Criteria for Nonprofit Clubs, Lodges, Community Halls and Camps

(Section 131.N.36)

1. The Petitioner provided sufficient information to establish itself as a nonprofit organization (Applicant's Exhibit 3). However, while the petition states that R.V. International Foundation is the owner of Building 3, the information provided does not establish this. This alleged ownership is also contradicted by other documents. As the TSR comments, Maryland State Department of Assessments and Taxation records and the applicable Record Plats all indicate that the Shangrila Assisted Living Facility and the Montessori School currently using Building 3 are both entities of and owned by Shangri-La Homes, a Maryland Corporation, not R.V. International Foundation. I therefore conclude the Petitioner has not sufficiently demonstrated compliance with this predicate requirement.

2. Section 131.N.36.a requires all buildings to be at least 50 feet from adjoining residentially zoned properties, but permits the Hearing Authority to reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(1) The adjoining land is committed to a long-term institutional or open space use that provides an equivalent or better buffer for vicinal residential development, or;

(2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring properties.

In this case, the Petitioner requests two setbacks be reduced to 20 feet. The first is for a reduction in the 50-foot setback along the south/southeast side lot line to the side of Building 3, which is situated about 29.26 feet at its closest point from the adjoining residentially zoned Parcel 592. Although the record is unclear about the presence of wetlands in this area, as the Petitioner attested, Parcel 592 is wooded and encumbered with wetlands and associated buffers

and the area is furthered buffered by a fence and additional landscaping. Even though the adjoining residentially zoned parcel is not specifically committed to a long-term institutional use or open space, the county water pumping station there is a long-term non-residential use. Were I to grant the proposed use, I would conclude here that a reduction to 29.26 feet would be appropriate.

The second request is for a reduced setback along the rear of Building 3, where the lot line adjoins Parcel 481, the site of the R-20-zoned Howard County water pumping station. Although Pradip Ghosh testified that the building is 20 feet from the lot line when measured from the first floor, it is still 19.29 feet from its closest point from the property lines. Because the Zoning Regulations bar any reduction to a setback than is less than 20 feet, this request must be denied.

3. The Site Development Plan related to the approval of Building 2 indicates the structure and parking lot on Lot 4 cover 47.1 percent of the 1.89-acre Site. Together with the open space and landscaped islands, the total open space area is 52.9 percent, which exceeds the 20 percent green space area requirement, in accordance with Section 131.N.36.b. However, the same calculation cannot be determined based upon the use of the parking area on Lot 3.

4. The petition states there will be no outdoor uses associated with the conditional use. Section 131.N.36.c. does not apply.

5. The site has frontage on and direct access to MD 103, a Minor Arterial, in accordance with Section 131.N.36.d.

ORDER

Based upon the foregoing, it is this 13th day of March 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of R.V. International Foundation for a community hall and camp conditional use in an R-20 (Residential: Single) zoning district is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 3/17/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.